

Message Text

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ACTION EA-09

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TAGS: EALR, EINV, EFIN, EMIN, AS

SUBJ: NEW GOVERNMENT TO AMEND FOREIGN TAKEOVERS ACT

REF 75 CANBERRA A-127, 75 CANBERRA A-206, 75 CANBERRA 8460,
75 CANBERRA 8542 (NOTAL)

SUMMARY: AT OPENING OF PARLIAMENT ON FEBRUARY 18, TREASURER
EXPECTED TO ANNOUNCE SEVERAL IMPORTANT AMENDMENTS TO FOREIGN
TAKEOVERS ACT. THESE INCLUDE CREATION OF STATUTORY FOREIGN
INVESTMENT REVIEW BOARD (FIRB) WITH AUSTRALIAN BUSINESS LEADER
AS CHAIRMAN, ENACTMENT OF SPECIFIC GUIDELINES FOR DETERMINATION
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OF "NATIONAL INTERESTS," AND MEASURES TO MAKE FOREIGN TAKEOVERS

SUBJECT TO "COMPETITIVE CONSEQUENCES" DETERMINATIONS OF TRADE ACT. IN MEANTIME FOREIGN INVESTMENT REGULATIONS BEING ADMINISTERED AS OUTLINED IN CANBERRA A-206. END SUMMARY.

2. ACCORDING TO RAY SHAUER, ACTING ASSISTANT SECRETARY IN FOREIGN INVESTMENT DIVISION OF TREASURY, THE NEW L-NCP GOVERNMENT IS EXPECTED TO MAKE SEVERAL IMPORTANT CHANGES TO THE FOREIGN TAKEOVERS ACT (CANBERRA A-127) WHICH CAME INTO EFFECT ON JANUARY 1 (CANBERRA 8469) WHEN PARLIAMENT OPENS FEBRUARY 18. SHAUER INFORMED US THAT TREASURER LYNCH FIRST WAS TO RELEASE "INTERIM STATEMENT" ON JANUARY 7, BUT LATER ACCEDED TO TREASURY ADVICE TO MAKE DEFINITIVE PROPOSALS AT PARLIAMENT OPENING.

3. IN ADDITION TO RECTIFYING MINOR DRAFTING INCONSISTENCY IN ACT, GOVERNMENT IS EXPECTED TO ANNOUNCE AMENDMENTS WHICH WOULD INCORPORATE INTO ACT THE NEWLY PROPOSED FOREIGN INVESTMENT REVIEW BOARD (FIRB). FIRB IS TO BE A STATUTORY BODY, MODELED ON CANADIAN LAW, AND WILL TAKE PRIME SCREENING RESPONSIBILITY FOR BOTH STRAIGHT FOREIGN INVESTMENTS AS WELL AS TAKE-OVERS OUT OF HANDS OF PUBLIC SERVICE-MANNED INTERDEPARTMENTAL FOREIGN INVESTMENT ADVISORY COMMITTEE. CHAIRMAN WILL BE PROMINENT AUSTRALIAN BUSINESS LEADER AND BOARD WILL INCLUDE REPRESENTATIVES FROM THE TREASURY AND RESERVE BANK.

4. PROPOSED LEGISLATION ALSO EXPECTED INCLUDE SPECIFIC GUIDELINES ON THE CRITERIA BY WHICH TAKEOVERS AND OTHER FOREIGN INVESTMENTS ARE ASSESSED TO BE IN "NATIONAL INTEREST." IT WILL CONTAIN PROVISIONS FOR ALL FOREIGN INVESTMENT PROPOSALS TO BE RECORDED IN A PUBLIC REGISTRY WHICH WILL NOT BREACH CONFIDENTIALITY OF THE DETAILS, BUT WILL ALLOW BROAD OUTLINES OF PROPOSITION TO BE KNOWN. THIS IN LINE WITH TRADE PRACTICES ACT REQUIREMENTS APPLYING TO DOMESTIC OFFERORS WHOSE PROPOSALS HAVE TO GO ON THE PUBLIC REGISTER. IN SAME CONNECTION, LEGISLATION ALSO EXPECTED REQUIRE FOREIGN TAKEOVERS TO MEET TESTS ON COMPETITIVE CONSEQUENCES THAT ARE APPLIED TO DOMESTIC TAKEOVERS AND MERGERS UNDER TRADE PRACTICES ACT BY TRADE PRACTICES COMMISSION.

5. IN MEANTIME TREASURY IS CONTINUING TO ADMINISTER FOREIGN LIMITED OFFICIAL USE

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INVESTMENT AND TAKEOVER REGULATIONS AS OUTLINED IN CANBERRA A-206.

6. COMMENT: PROPOSALS FOR CREATION OF FIRB AND ESTABLISHMENT OF SPECIFIC GUIDELINES FOR DETERMINATION OF "NATIONAL INTERESTS" APPARENTLY REFLECT A DESIRE TO REMOVE EXCLUSIVE POWER OF APPROVAL OF FOREIGN INVESTMENTS FROM HANDS OF PUBLIC SERVICE, PARTICULARLY THE TREASURY WHICH HAS FAVORED A "CASE BY CASE"

METHOD FOR DETERMINING NATIONAL INTEREST. ALTHOUGH THE MORE
FLEXIBLE APPROACH, THIS HAS ALSO LED TO UNCERTAINTY FOR WOULD-
BE INVESTORS.
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